RECENT DECISIONS

ASSAULT AND BATTERY—INSULTING WORDS AS JUSTIFICATION—POLICY OF PENAL STATUTE APPLIED CIVILLY.—A statute provided that in a criminal prosecution for assault and battery insulting words might be a justification. In a civil action for assault and battery, *held,* the jury might find for the defendant if they considered the plaintiff's insulting words as sufficient provocation. *Choate* v. *Pierce* (Miss. 1921) 88 So. 627.

In Alabama the application of a similar statute is limited to criminal prosecutions. *Mitchell* v. *Gambill* (1903) 140 Ala. 316, 37 So. 290. An examination of the cases shows that where such statutes seem to be applied to tort actions, the courts are not in terms extending the statute, but are adopting the expressed policy of the legislature in criminal cases as their policy in civil cases; and are changing the common law accordingly. See *Berkner* v. *Dannenberg* (1903) 116 Ga. 954, 963, 43 S. E. 463 (dissenting opinion); adopted in *Thompson* v. *Shelverton* (1908) 131 Ga. 714, 63 S. E. 220. This holding avoids the anomalous doctrine that a provocation which excuses one's wrong against the state does not excuse his wrong against the provoker. It should be borne in mind, however, that the same policy is not always applicable to tort as to crime; and care should be taken to avoid the error of assuming that what is not criminal is not unlawful, as was assumed in the dissenting opinion of *Berkner* v. *Dannenberg, supra.*

ATTORNEY AND CLIENT—CONTINGENT FEE—DISMISSAL OF SUIT BY CLIENT.—The plaintiff directed his attorney, who was engaged upon a contingent fee, to dismiss an appeal from a judgment against him in the lower court. The attorney refused. *Held,* the attorney was vested with an interest in the action entitling him to intervene in the suit, and hence the defendant's motion to dismiss the appeal was denied. *Kellogg* v. *Winchell* (App. D. C. 1921) 273 Fed. 745.

It is well established that a client may dismiss his attorney at any time and without cause, although the latter is employed on a contingent fee. *Martin* v. *Camp* (1916) 219 N. Y. 170, 114 N. E. 1072; see *Henry* v. *Vance* (1901) 23 Ky. Law Rep. 491, 496, 63 S. W. 275. But the courts will protect attorneys against acts which deprive them of remuneration for their services. In the case of contingent fees three ways of doing this have been suggested. The court may, as in the instant case, vest the attorney with an interest in the action, tantamount to an assignment. However, it seems fairer to treat such an agreement as a mere promise to pay a part of the claim when collected. See *Story* v. *Hull* (1892) 143 Ill. 506, 511, 32 N. E. 265. And the theory of an assignment does not seem consistent with the general rule that a client may compromise a case without the consent of his attorney. *Schriever* v. *Brooklyn Heights R.* (1899) 30 Misc. 145, 61 N. Y. Supp. 890; *Cameron* v. *Boeger* (1902) 200 Ill. 84, 65 N. E. 690. Furthermore, policy is opposed to the encouragement of litigation which would result from such a practice. Secondly, the attorney might sue his client in contract. *Kersey* v. *Garton* (1883) 77 Mo. 645; see *French* v. *Cunningham* (1898) 149 Ind. 632, 639, 49 N. E. 797. But it seems impossible to determine his damages in contract if the suit is not concluded. The simplest and fairest solution would be to allow the attorney a *quantum meruit* for the reasonable value of his services. *Ibert* v. *Aetna Life Ins. Co.* (D. C. 1914) 213 Fed. 996.

CONSTITUTIONAL LAW — FORMER JEOPARDY — EIGHTEENTH AMENDMENT. — The defendant transported liquor between two points in New Hampshire and was convicted for violating the state prohibition law. He is now tried for the same